

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

**CIVIL ACTION FILE NO.:
1:17-cv-2989-AT**

DECLARATION OF VIRGINIA FORNEY

VIRGINIA FORNEY hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I have personal knowledge of the facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
2. I am a Fulton County registered voter residing in Atlanta. I participate in all elections for which I am eligible to vote.
3. I am a member of the Coalition for Good Governance's ("CGG") Board of Directors, and a member of CGG.
4. I am a physician managing a multi-office practice in the metro-Atlanta area.

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5. I have served as president of the Medical Association of Georgia and remain active with the organization. The Medical Association of Georgia is quite active in lobbying state and federal elected officials regarding legislation and rule-making related to healthcare. I am personally active in such activities interacting with such lawmakers.

6. I donate funds and volunteer time to a wide variety of Georgia-based candidates and elected officials with varying political affiliations who may be in decision-making roles regarding healthcare legislation.

7. I am a strong advocate for voting and support of a democratic society. I made a permanent button with the "I voted" Peach label on it and I wear it in my office practice every day that the polls are open (both early voting and election day). I want to serve as an example to my staff, patients and friends that the civic engagement of voting is important. It is one of the reasons I prefer to vote in the polling place, so that I am seen actively participating. I also like to take advantage of the opportunity to personally thank the poll workers for their service.

8. However, it is important to me to maintain the secrecy of my personal votes for a variety of reasons, regardless of my lobbying and election related activities. My practice includes a very diverse staff and patient group, with wide ranging and sometimes strongly held political views. Therefore, I am quite careful

in discussions of partisan politics with my practice's staff, suppliers, and patients, including keeping my own voting choices private, to avoid the inevitable management problems that would result.

9. My patients often make inaccurate assumptions about my political views in their conversations with me. I make a deliberate effort to engage without disagreement or disclosure of my views while expressing interest in theirs. I want to only selectively and carefully disclose my political preferences and not have those preferences involuntarily disclosed in indiscriminate ways by the voting system.

10. I am particularly concerned about the threats to my personal ballot secrecy and risk that my private votes will be known and discussed in the context of my practice. This risk results in affecting the manner and additional effort I engage in to protect my vote in some elections where the ballot may have politically sensitive choices.

11. Fulton County's large bright touchscreen machines perched at eye-level or higher permit voters, partisan poll watchers, poll workers, press, and the public in the polling place to see the voters' vote selections.. I am also aware that in some polling places touchscreen votes are captured on security video recordings. This is something I am very conscious of when I vote.

12. I now generally vote in early voting locations near my primary office. Before I vote on a touchscreen, I look around to see if there are patients, staff, suppliers, neighbors, or members of the press who are in the room and in a position to observe how I vote. Merely having to take this into consideration to determine what action to take if there are observers who make me uncomfortable is a burden on voting. My efforts to protect my privacy in this manner would not be necessary if the legal protections for ballot secrecy were honored.

13. In addition to my concern about the public visibility of my vote selections on the touchscreen, I'm even more concerned about the permanent traceable record that I've recently learned is available because of the non-randomized recording of votes in the scanner.

14. I don't want my voting experience to be an activity where I am attempting to remain unseen by colleagues. Instead, I want to enthusiastically set a good example for my staff and patients by being seen encouraging and enjoying the civic responsibility of voting, and associating with friends and neighbors in the polling place.

15. For some time I have been generally aware of the experts' concerns that the memory cards of the scanners record the order of the votes and the poll officials insider access to that improperly recorded traceable data.

16. However, more recently I became aware of Dr. Halderman's team's work that states that ballot images and cast vote records are recorded with a predictable sequence number embedded, permitting ballots to be connected to the voter with some limited data available on the voters' sequence in scanning their ballot.

17. During the last two elections I made a point to note the public counter on the scanner that incremented by one number when I cast my ballot into the scanner. I also noted the time of day I cast the vote. It is clear that poll workers and poll watchers, the public and the press can also record such public counter numbers to determine the sequence number for voters in whom they are interested in connecting with their ballot.

18. Marilyn Marks, Executive Director of Coalition for Good Governance, has explained to me how she can likely take this information I saved and use it to detect the data on my private votes on my ballot from public records such as the cast vote records, and easily determine the ballots of the specific voters casting their votes before or after me as well.

19. There are numerous reasons that I do not want my vote choices made available to election insiders, temporary election workers, the public or the press. I consider it an unnecessary and troublesome burden to have to consider as I am

marking my ballot whether I am free to vote my conscience without consequence to my medical practice.

20. Adding to the burden of casting a BMD ballot is the need to and legal requirement for me to review the ballot content before casting to ensure that the machine is operating properly and has accurately marked my choices. My Fulton County ballots often have 20 or more contests. The May 2022 primary included an impossible-to-memorize 48 contests.

21. It is time consuming and infeasible for average voters like myself to memorize the entire ballot content in such cases and be required to review the printout to determine whether a contest for Soil Commissioner or Appeals Court Judge or tax measure was left off the ballot summary when the ballot was printed. I am not in the habit of memorizing the ballot content although I know who I voted for in any given contest. I believe memorizing ballot content is too much to demand of voters if actual compliance of voter review is expected. I also do not understand how the legal requirement for a voter to review a ballot for accuracy can be enforced fairly.

22. In my most recent voting experiences at the polling place, no poll worker asked that I check my ballot printout.

23. Voting using the BMD touchscreen and QR Code printout prevents me from seeing the actual vote recorded based on my touchscreen selection. In contrast, when I vote on a hand marked paper absentee ballot, it is clear that the oval I filled is associated with the selected candidate's name. I know how my vote is recorded before I cast it, which is not true with the QR coded ballot. I cannot correct an error on the QR coded ballot, but can correct an error on a hand marked paper ballot.

24. I have at times purposely avoided voting on BMDs by obtaining a mail absentee ballot. However, given my work schedule, I simply do not have the time flexibility to undertake the necessary steps to apply for the ballot, monitor the application progress, assure ballot issuance, and monitor ballot receipt progress in Fulton County that I have learned is required to ensure that I can effectively vote. Many of my friends tell me about their failures to receive timely ballots after hours spent attempting to obtain a mail ballot. My business hours schedule simply does not permit me to invest that time to shepherd through a mail ballot.

25. In the aftermath of SB202 when the absentee ballot application schedule was narrowed, the number and convenience of drop box locations reduced, the reduction of hours of drop box availability, combined with the increased identity theft risk as a result of requiring increased Personal Identifying

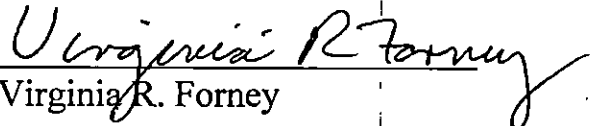
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Information on the application, voting by absentee mail ballot has become too risky for me as a routine practice. Voting by mail ballot is not the simple alternative for me to protect my ballot secrecy.

26. Given the cybersecurity risks of the BMD system and the in-person voting ballot secrecy violations weighed against the increased difficulties of voting by mail ballot, it is difficult for me and other voters like me, I'm sure, to determine the most effective, private and secure way to cast our ballots.

27. My strong preference is to vote by absolutely secret ballot in a nearby polling place on a secure ballot that can and will be audited. Georgia does not appear to offer a method of casting such a ballot.

Executed on this date, January 31, 2023


Virginia R. Forney